

**TESTIMONY IN FAVOR OF HB 119
BEFORE THE SENATE BUSINESS, LABOR, AND ECONOMIC
AFFAIRS COMMITTEE
JERRY KECK, ADMINISTRATOR
EMPLOYMENT RELATIONS DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
MARCH 5, 2009**

Chairman Balyeat and members of the committee, my name is Jerry Keck. I am the administrator of the Employment Relations Division of the Department of Labor and Industry. First, I want to thank Rep. Hunter for agreeing to carry this bill.

The Employment Relations Division implements and administers a number of programs affecting the employer – employee relationship. One area of regulatory responsibilities is in the workers' compensation system. HB 119 is the department workers' compensation bill addressing a wide range of regulatory issues in workers' compensation that have arisen during the past biennium.

1. Section 1 (pages 1-2) allows the department to enter into agreements with tribal governments to recognize and give effect to tribal workers' compensation plans or self-insured plans that the department determines provide adequate coverage to employees.
2. Section 2 (page 2) allows a current or former self-insurer to transfer workers' compensation claim liabilities to a third party and sets out the requirements to do so.
3. Section 3 (pages 2-5) requires that upon application for a professional employer organization license, any controlling person shall submit fingerprints for the purpose of fingerprint checks by the Montana Department of Justice.
4. Section 4 (pages 6-7) requires that a written explanation is provided to the claimant describing how the claimant may appeal an insurer's denial of benefits.
5. Section 5 (pages 15-19) allows the assessment on Plan I, II and III insurers to be for an amount up to 3% of paid losses instead of exactly 3% as was required previously and inserts a notification provision for the department to notify the self-insureds of the rate that will be assessed by April 30th each year.
6. Section 6 (page 19) removes claims examiners from those that can be penalized for refusal or neglecting to submit reports necessary for the proper filing and review of a claim.
7. Section 7 (page 19-20) addresses an issue from a Workers' Compensation Court decision in the case of Shelly Weidow v. Uninsured Employers' Fund (UEF). In that case, Judge Shea found that the existing language was confusing in not clearly identifying what determination (the denial of benefits by the UEF or the mediator's report) became

the agency final determination. He concluded that the language was unconstitutionally vague. We want to clarify that language.

8. Section 8 (pages 20-21) provides that claims for occupational diseases must be presented in writing, signed by the claimant or the claimant's representative.

9. Section 9 (page 21) allows for voluntary mediation over disputes involving the forfeiture of attorney fees.

10. Section 10 (pages 21-26) removes the interim language made obsolete by the adoption of a hospital fee schedule, amends the source of the conversion factor information for the fee schedule from disability insurance carriers to group health insurance carriers and establishes a 1% market share requirement for those carriers used. This section also adopts certain medical fee schedule standards as adopted by the centers for medicare and medicaid services and establishes a requirement for medical bills to be paid by insurers within 30 days of receipt or interest may be charged. Also establishes a requirement for medical providers to pay back any overpayments within 30 days of a determination of the correct reimbursement amount or interest may be charged and establishes that unresolved disputes over fees for medical services may be brought to the workers' compensation court.

11. Section 11 (pages 26) clarifies that impairment ratings may be obtained from an evaluator who qualifies as a treating physician if the injury falls within the scope of the treating physician's practice. **(There will be an amendment offered to clarify who specifically is able to perform an impairment rating evaluation.)**

12. Section 12 (pages 26-28) removes the limitation on the number of weeks that temporary partial disability benefits may be paid.

13. Section 13 (pages 28-29) allows for an insurer to authorize up to a 90-day supply of medications from an in-state mail service pharmacy.

14. Section 14 (pages 29-30) amends the reference section to reflect the changes made in section 10.

15. Section 15 (page 30) removes the requirement that applicants for the subsequent injury fund apply before employment or within 60 days of becoming employed and upon approval amends the effective date of the certification to the date the application was received.

16. Section 16 (pages 30-32) of the bill would allow the department to defer the assessment for the subsequent injury fund to a subsequent year when the balance to be assessed is less than \$1,000,000

17. Section 17 (pages 32-33) would assess a penalty on the State Fund of up to \$200 for each policy cancellation that is not reported to the department in a timely manner.

18. Section 18 (pages 33-34) fixes a codification error from the last session.

19. Sections 19 through 22 (page 34) provide for notification to tribal governments, codification instructions, a saving clause, and the effective dates of the bill.

Mr. Chairman and members of the committee, the department is requesting your support for HB 119. I will try to answer any questions that you may have. Thank you.